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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2014-0055; Notice 2]

Harley-Davidson Motor Company, Inc., Grant of Petition for
Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA),
Department of Transportation (DOT).

ACTION: Grant of Petition.

SUMMARY: Harley-Davidson Motor Company, Inc. (Harley-Davidson) has determined that certain model year (MY) 2009-2014 Harley-Davidson FL Touring motorcycles do not fully comply with paragraph S6.1.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, reflective devices, and associated equipment*. Harley-Davidson has filed an appropriate report dated April 7, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Mike Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334, facsimile (202) 366-5930.

SUPPLEMENTARY INFORMATION:

I. Harley-Davidson's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Harley-

Davidson submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on July 7, 2014 in the Federal Register (79 FR 38360). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2014-0055."

II. Vehicles Involved: Affected are approximately 343,680 MY 2009-2014 Harley-Davidson FL Touring motorcycles manufactured between June 10, 2008 and March 25, 2014.

III. Noncompliance: Harley-Davidson explains that the noncompliance is that the location of the rear reflex reflectors on the subject vehicles are mounted between an average of 0.3" to 0.7" below the required 15" height-above-road surface as required by paragraph S6.1.3 of FMVSS No. 108.

IV. Rule Text: Paragraph S6.1.3.1 of FMVSS No. 108 requires in pertinent part:

S6.1.3.1 Each lamp, reflective device, and item of associated equipment must be securely mounted on a rigid part of the vehicle, other than glazing, that is not designed to be removed except for repair, within the mounting location and height limits as specified

in Table I, and in a location where it complies with all applicable photometric requirements, effective projected luminous lens area requirements, and visibility requirements with all obstructions considered.

V. Summary of Harley-Davidson's Analyses: Harley-Davidson stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

- Harley-Davidson had a third-party conduct testing on the subject motorcycles and reflex reflectors and they exhibited no reduction in conspicuity as compared to compliant vehicles. The independent company tested five test heights, for a test range of 11"-15" height above-road surface, and all five tests far exceeded the minimum required values at each of the 10 test points specified in Table XVI. Due to the substantial safety margin designed into these reflex reflectors, photometry remained well above the minimums even when mounted a full 4" inches below the minimum mounting height.
- Harley-Davidson believes that the lower mounting height of these reflectors may actually increase conspicuity and motor vehicle safety compared to fully compliant (higher mounted) reflectors.
- Harley-Davidson notes that the United Nations ECE regulations specify a minimum mounting height of 9.84"

(240mm). And further notes that in one study of daytime side vehicle conspicuity of motorcycles, NHTSA's researchers concluded that the mounting height of the side reflex reflectors (12 inches vs 15 inches) was an "insignificant" factor for vehicle identification distance.

- Harley-Davidson further states that under FMVSS No. 108, tail lamps and license plate lamps on motorcycles are required to be illuminated whenever the headlamp is activated. And that since all Harley-Davidson models are equipped with automatic headlights on (AHO) functionality, the headlamps and tail lamps are automatically illuminated when the ignition is in the on position, thus providing conspicuity during daylight and darkness while the motorcycle is operating.

Harley-Davidson also made reference to a withdrawal of rulemaking regarding a lower height for reflex reflectors.

Harley-Davidson has additionally informed NHTSA that it has corrected the noncompliance so that all future production motorcycles will comply with FMVSS No. 108.

In summation, Harley-Davidson believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt Harley-Davidson from providing recall notification of noncompliance as

required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA DECISION:

NHTSA Analysis: NHTSA has reviewed and accepts Harley-Davidson's analyses that the subject noncompliance is inconsequential to motor vehicle safety.

The primary function of a reflex reflector is to reduce accidents by permitting early detection of an unlighted motor vehicle approaching an intersection or parked by the side of the road. NHTSA has concluded that the test data provided by Harley-Davidson relative to the photometric performance of the reflex reflectors as mounted on the subject motorcycles is sufficient justification for NHTSA to concur with Harley-Davidson's assessment that the location of the rear reflex reflectors as mounted on the subject vehicles poses little if any risk to motor vehicle safety.

NHTSA Decision: In consideration of the foregoing, NHTSA has decided that Harley-Davidson has met its burden of persuasion that the FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety. Accordingly, Harley-Davidson's petition is hereby granted and Harley-Davidson is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject motorcycles that Harley-Davidson no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motorcycles under their control after Harley-Davidson notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Jeffrey M. Giuseppe, Acting
Director,
Office of Vehicle Safety Compliance.

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